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Via Certified Mailing -
Return Receipt Requested

August 5, 2015

George Chavez
Director of Public Works Services
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210

Members of the City Council
City of Beverly Hills
455 North Rexford Dr., Room 400
Beverly Hills, CA 90210

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Chavez and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"; 33 U.S.C. § 1251 *et seq.*) that River Watch believes are occurring through the ownership and/or operation of the City of Beverly Hills' sewage collection system and storm water collection system. River Watch hereby places the City of Beverly Hills ("the City"), as owner and operator of the City of Beverly Hills' wastewater collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), and the Regional Water Quality Control Board, Los Angeles Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the City's sewer pipelines, to a water of the United States.

River Watch takes this action to ensure compliance with the CWA which regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of the CWA. River Watch alleges the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§301(a) and 505(a)(1)(A), 33 U.S.C. §§1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Regional Water Quality Control Board, Los Angeles Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The Specific Standard, Limitation, or Order Alleged to Have Been Violated.*

River Watch has identified discharges of sewage from the City's sewage collection system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306,

307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from August 1, 2010 to August 1, 2015, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Collection System Subsurface Discharges Caused By Underground Exfiltration

Underground discharges, in which untreated sewage is discharged from the City's collection system prior to reaching the Hyperion Treatment Plant, are alleged to have been continuous throughout the period from August 1, 2010 through August 1, 2015 in violation of the CWA.

Exfiltration caused by pipeline cracks and other structural defects in the City's collection system result in discharges to adjacent surface waters via underground hydrological connections. The City's internal reports indicate discharges to surface waters not reported to the California Integrated Water Quality System ("CIWQS") web based information and data program. Many sections of the City's collection system are quite old and in need of repair. The City's sewer system is a gravity flow system consisting primarily of vitrified clay pipe constructed from the 1920s to the present, with only 2 percent built since 1980, and 48 percent constructed in the 1930s. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into groundwater hydrologically connected to surface waters. Evidence indicates extensive exfiltration from lines located within 200 feet of a surface water.

River Watch alleges that such discharges are continuous wherever aging, damaged, and/or structurally defective sewer lines in the City's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to pathogens. Chronic failures in the collection system pose a substantial threat to public health. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage.[1]

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[1] See Report of Human Marker Study issued July, 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

Evidence of exfiltration can be found in mass balance data, inflow and infiltration ("I/I") data, video inspection, and tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Exfiltration from the City's collection system is a daily occurrence and a violation of the CWA.

B. Collection System Surface Discharges Caused By Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching the Hyperion Treatment Plant, are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports (35 separate violations) and on dates when no reports were filed by the City, all in violation of the CWA. The below listed violations are reported by the RWQCB, and evidenced by the CIWQS SSO Reporting Program Database Records.

20 - SSOs which were reported as reaching a water of the United States, as evidenced in CIWQS and the records of the City. As listed in CIWQS the event IDs of those violations are: 785383, 785484, 785614, 786354, 786803, 787085, 788759, 790827, 794956, 796880, 799376, 800315, 801729, 805702, 807084, 808418, 812136, 814519, 814593, 816000.

All of these discharges are violations of CWA § 301(a), 33 U.S.C. 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

Releases Reported. The City's aging collection system has historically experienced high I/I during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains (unfiltered) which are connected to adjacent surface waters such as Ballona Creek which runs to the Pacific Ocean through a concrete-lined channel. Both are waters of the United States.

As recorded in CIWQS Public SSO Reports, the City's collection system has experienced at least 35 SSOs between January 8, 2011 and June 22, 2015, with a combined volume of at least 68,832 gallons – 19,588 gallons of which were reported as having reached surface waters. For example, on July 16, 2013 a spill took place in the 500 block of North Maple Drive, caused by roots (Event ID # 796880). The spill volume was estimated by the City as 4,000 gallons, 3,300 of which was reported as reaching Ballona Creek (via the storm drain). Also, on August 8, 2014 a spill of 4,100 gallons took place at nearby 504 North Maple Drive, again caused by root intrusion (Event ID # 808418) with 2,000 gallons reported as reaching Ballona Creek through the storm drain.

This Notice also includes multiple violations that may have occurred on the same day but were reported to CIWQS as a single violation. Many of the City's SSO Reports state "null" for question 12, "Number of appearance points".

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by the City as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching a surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that the majority of SSO Reports filed by the City state the estimated start time of the SSO as the time when the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The City's Reports indicate that some of the discharges reach a storm drain, but fail to determine the accurate amounts which reach a surface water.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. In the previously mentioned spills, the reported start time and agency notification time are the same. For the August 8, 2014 spill, Event ID # 808418, the operator arrival time is stated as 10 minutes after the notification time. For the July 16, 2013 spill, Event ID # 796880, the operator arrival time is reported as just 3 minutes after the SSO supposedly began and was discovered. It is highly unlikely these times and intervals are accurate. River Watch contends that the City is grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's "*Report to Congress on the Impacts of SSOs*" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances.

Ballona Creek flows into the Ballona Wetlands Ecological Reserve where it meets the Pacific Ocean. Many threatened species reside in the Ballona Wetlands which is a stop along the migratory Pacific Flyway. There is no record of the City performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO including limiting the

volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City is also not conducting sampling on most SSOs.

C. Impacts to Beneficial Uses

Ballona Creek has many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching Ballona Creek through the storm drain system cause prohibited pollution by unreasonably affecting the Creek's beneficial uses. The Ballona Wetlands Ecological Reserve, one of the last significant wetland areas in the Los Angeles Basin, is a vital yet damaged ecosystem hosting numerous species of special concern, including the Northern harrier, Slender salamander, and the California gnatcatcher.

River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around Ballona Creek, especially in the Ballona Wetlands.

3. *The Person or Persons Responsible for the Alleged Violation.*

The entity responsible for the alleged violations identified in this Notice is the City of Beverly Hills and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The Location of the Alleged Violations.*

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its sewage collection system as further described in this Notice.

The City of Beverly Hills is located in Los Angeles County, west of the City of West Hollywood and surrounded on all other sides by the City of Los Angeles. The area north of Santa Monica Boulevard consists of low and medium density single-family residential neighborhoods. The area along Wilshire Boulevard is primarily commercial and office districts. South of Wilshire Boulevard consists of commercial, medium to high-density residential neighborhoods, and mixed-use elements.

The general topography of the City is fairly level in the southern portions, while steadily increasing in elevation to the north. From the northeast corner of the City to the southeast, elevations range from 1,350 feet to 130 feet above sea level. The climate is dry and subtropical. The City is characterized by low humidity with a large amount of sunshine. The annual temperature range is between 57 and 75 degrees Fahrenheit, with an average of 66 degrees. The average annual rainfall for the area is 14.8 inches.

The City's sewer collection system is located entirely within the City's boundaries. The surrounding sewer service providers include the City of Los Angeles and the City of West Hollywood. The service area is approximately 5.7 square miles and serves a population of approximately 34,000 residents. Wastewater generated in the City is conveyed through service laterals to the City-owned gravity sewer (mains) pipelines, then into the sewer system owned by the City of Los Angeles and finally into the Hyperion Treatment Plant in Playa del Rey.

The backbone of the City's sewer system consists of pipelines ranging from 10-inches to 36-inches in diameter which collect flow from smaller pipelines and convey wastewater into the City of Los Angeles' and Los Angeles County Sanitation District's collection system. The 100+ miles of local sewer collection pipelines are primarily 8 inches in diameter. The general direction of flow of the sewer system is from north to south. No sewer lift stations are required to convey flow. The 2010 Beverly Hills Sewer System Management Plan ("SSMP") reflects that out of the 15% of the sewer system inspected via closed circuit television, 39% of the pipelines were in need of some form of rehabilitation such as relining or spot repairs.

The City's sewer collection system contains, in addition to 2,236 manholes, approximately 100 lampholes constructed in the 1920s and 1930s as a way of allowing visual inspection and cleaning from the surface without manned entry. The lampholes are typically 12-24 inches in diameter and appear to be very similar to today's sewer cleanout. The City has gradually replaced the lampholes with manholes as system improvements have occurred. Most of the manholes are 48 inches in diameter. The predominant construction material is precast concrete, but several manholes were constructed with brick and mortar. The manholes are primarily located within public streets and alleys, however, over 100 manholes are located on private property north of Sunset Boulevard.

The City's sewer system is a gravity flow system consisting primarily of vitrified clay pipe constructed from the 1920s to the present. As stated previously, 48% of the sewer system was constructed in the 1930s. The useful life of vitrified clay pipe depends on many factors, but often is considered to be roughly 60 years. Conditions such as earth loads, root intrusion and grease build-up will adversely affect both pipe capacity and

useful life. In addition, the technology used to fabricate the pipe and type of joint gaskets has significantly improved since the 1960s.

The City is situated within the Santa Monica Bay watershed consisting of 28 smaller sub-watersheds including Ballona Creek. Ballona Creek is an 8.8 mile long watershed draining into the Los Angeles Basin from the Santa Monica Mountains on the north, Harbor Freeway (I-110) on the east, and Baldwin Hills on the south. The Creek heads in the historical Rancho Las Cienegas and flows through Culver City and the Del Rey district before emptying into Santa Monica Bay between Marina del Rey and the Playa del Rey district.

The City's storm drain system is designed to prevent flooding by carrying away excess rainwater from city streets to the Pacific Ocean via Ballona Creek. Because the system contains no filters, urban pollution is carried straight to the Ocean at the Santa Monica Bay watershed via Ballona Creek. Urban pollution contaminates the Ocean, causes beach closures, harms aquatic life, and increases the risk of flooding by clogging gutters and catch basins.

5. *The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

River Watch has examined records of the SWRCB and the RWQCB with respect to the City's collection system for the period from August 1, 2010 to August 1, 2015. The range of dates covered by this Notice is August 1, 2010 to August 1, 2015. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving Notice is California River Watch, referred to herein as "River Watch." River Watch is an Internal Revenue Code 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's Southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email:US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed as follows:

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RECOMMENDED REMEDIAL MEASURES

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within two hundred (200) feet of surface waters.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within two hundred (200) feet of surface waters including gutters, canals and storm drains which discharge to surface waters.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect.

II. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the City into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the City's ongoing non-compliance with the CWA:

A. Sewer Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the City's sewer collection system located within two hundred (200) feet of surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past ten (10) years and are rated as Significantly Defective or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the City will:

i. Repair or replace all sewer lines found to be Significantly Defective;

ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the City determines the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within three (3) years of the rating determination.

5. Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. Said program to begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

ii. For Category I Spills, a listing of nearby residences or business owners who have been contacted, to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

2. Water quality sampling and testing to be required whenever it is estimated that fifty (50) gallons or more of untreated or partially treated wastewater enters surface waters.

i. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli, and a CAM-17 toxic metal analysis.

ii. The City shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the City will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the

entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect.

3. Creation of website capacity to track information regarding SSOs, or in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.

C. Lateral Inspection/Repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

iv. Upon replacement or repair of any part of the sewer lateral;

v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or,

vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants, 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 (*see also* 40 C.F.R. §§ 19.1 – 19.4). River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact River Watch within **20 days** after receipt of this Notice Letter to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

cc: Administrator
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